IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 282 OF 2002
In
SPECIAL CIVIL APPLICATION NO. 7475 OF 1988
With
CIVIL APPLICATION NO.3997 OF 2002
In
LETTERS PATENT APPEAL NO. 282 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAIRMAN, EDUCATION COMMITTEE & ANR. - Petitioner(s)

Versus

SATWARA PAMIBEN KALYANJI & 2 - Respondent(s)

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Appearance :

MR. P.V. HATHI for Appellant No(s).: 1,2.

None for Respondent No.1, though name of Ms.Sadhana Sagar appears.

RULE SERVED for Respondent No(s).: 2,3.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG &
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 05/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr.P.V.Hathi, learned Counsel for the appellants, submits that the original petitioner came to be appointed with the appellants in the year 1981 as a part-time temporary employee for serving/filling drinking water for about 1-1/2 hours. His submission is that the learned single Judge, while allowing the Writ Application, in paragraph-8, gave a liberty to the appellants to consider the case of the petitioner in light of three Circulars, but, at the same time, also issued a mandate to absorb the original petitioner as a Peon in Class-IV post and grant all consequential benefits, including payment of regular salary and arrears on the said basis, which is mutually exclusive and self contradictory. His submission is that if authority is given to the appellants to consider the case, then, further mandate could not be issued.

2. Referring to the three Government Circulars, Mr.Hathi wanted to contend that the Circulars, in fact, are not

applicable to the case of the present appellants. We, however, would not enter into the said controversy, but, would simply require the appellants to consider the case of the petitioner from the date of receipt of certified copy of this judgement or service of writ of this Court, whichever is earlier, in light of the three Government Resolutions dated 26th December, 1980, 15th October, 1992 and 15th February, 1999 and if a finding is recorded that the Circulars or any of the Circular applies to the facts of the case and fate of the present petitioner, then, in accordance with the Circular/s, the appellants shall absorb the original petitioner as a Peon in Class-IV post and grant her all consequential benefits, including payment of regular salary and arrears on the said basis.

3. To the extent indicated above, we modify the directions issued by the learned single Judge and dispose of the appeal. The interim order granted earlier is vacated. It is, however, made clear that the original petitioner if is in service and is being paid in accordance with the Government Resolutions and Circulars, then, because of the disposal of this appeal, she would not be terminated nor her monetary entitlement would

stand adversely affected. The decision shall be communicated to the original petitioner within a period of four weeks from the date of the decision. In case the petitioner is held entitled to be absorbed and salary, then, within a period of three months from the date of the decision, she would be given permanent status and would be paid arrears of the salary, to be calculated in accordance with law. Her entitlement to arrears is to be calculated from the date of filing of Special Civil Application No.7475 of 1988.

4. Consequently, the Civil Application is also rejected. Rule is discharged.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.***]

*kamlesh**